

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

**IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION**

This document relates to:

*Vicki L. Martinez v. Daiichi Sankyo, Inc.
Et al.*

MDL No. 2606

Honorable Robert B. Kugler,
District Court Judge

Honorable Joel Schneider,
Magistrate Judge

SHORT FORM COMPLAINT

Plaintiff(s) file(s) this *Short Form Complaint and Demand for Jury Trial* against Defendants named below by and through the undersigned counsel. Plaintiff(s) incorporate(s) by reference the allegations contained in *Plaintiffs' Master Long Form Complaint and Jury Demand in In re: Benicar (Olmesartan) Products Liability Litigation*, MDL 2606 in the United States District Court for the District of New Jersey, Camden Vicinage. Plaintiff(s) file this Short Form Complaint as permitted by Case Management Order No. 6 of this Court.

In addition to those causes of action contained in *Plaintiffs' Master Long Form Complaint and Jury Demand*, where certain claims require specific pleadings and/or amendments, Plaintiff(s) shall add and include them herein.

IDENTIFICATION OF PARTIES

Identification of Plaintiff(s)

1. Name and residence of individual injured due to use of *olmesartan* product(s): Vicki Lynne Martinez, 118 West Lubbock, Apartment #1, San Antonio, Texas 78204

2. Plaintiff(s) is/are a citizen of City of San Antonio, County of Bexar, State of Texas.

3. Consortium Claim(s): The following individual(s) allege damages for loss of consortium: Not applicable.

4. Survival and/or Wrongful Death Claims:

a. Name and residence of Decedent Plaintiff when he/she suffered *olmesartan* product(s) related injuries and/or death: Not applicable.

5. Plaintiff/Decedent was born on 05/28/1956.

6. Plaintiff is filing this case in a representative capacity as the _____ of the _____ having been duly appointed as the _____ by the _____ Court of _____.

Plaintiff(s) claims damages as a result of:

- ☒ injury to herself/himself
- ☐ injury to the person represented
- ☐ wrongful death
- ☐ survivorship action
- ☒ economic loss
- ☐ loss of services
- ☐ loss of consortium

Identification of Defendants

7. Plaintiff(s)/Decedent Plaintiff(s) is/are suing the following Defendant(s) (please check all that apply):

Daiichi Sankyo Defendants:

- X Daiichi Sankyo, Inc.
- X Daiichi Sankyo U.S. Holdings, Inc.
- X Daiichi Sankyo Co., Ltd.

Forest Defendants:

- X Forest Laboratories, LLC, f/k/a Forest Laboratories, Inc.
- X Forest Pharmaceuticals, Inc.
- X Forest Research Institute, Inc.

Additional Defendants:

☐ Other(s) Defendant(s) (please specify): _____

JURISDICTION & VENUE

Jurisdiction:

8. Jurisdiction in this Short Form Complaint is based on:

☒ Diversity of Citizenship

☐ Other (As set forth below, the basis of any additional ground for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure). _____

Venue:

9. District Court and Division in which remand and trial is proper and where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court: United States District Court for the Western District of Texas, San Antonio Division.

CASE SPECIFIC FACTS

10. Plaintiff(s) currently reside(s) in (City, State): San Antonio, Texas.

11. At the time of the Plaintiff's/Decedent's *olmesartan* product(s) injury, Plaintiff/Decedent resided in (City, State): San Antonio, Texas.

12. Plaintiff/Decedent began using *olmesartan* product(s) as prescribed and indicated on or about the following date: October, 2007.

13. Plaintiff/Decedent was prescribed and used the following *olmesartan* products

X BENICAR®

X BENICAR HCT®

☐ AZOR®

☐ TRIBENZOR®

14. As a result of ingesting *olmesartan* products, Plaintiff/Decedent suffered personal and economic injur(ies), including, but not limited to, the following: Severe abdominal pain, chronic diarrhea, pelvic pain, cramping, severe gastrointestinal injuries, and hospitalization.

CAUSES OF ACTION

15. Plaintiff(s) hereby adopt(s) and incorporate(s) by reference the *Master Long Form Complaint and Jury Demand* as if fully set forth herein.

16. The following claims and allegations asserted in the *Master Long Form Complaint and Jury Demand* are herein adopted by Plaintiff(s):

- X Count I: Products Liability – Design Defect (Strict Liability)
 - X Count II: Products Liability – Failure to Warn (Strict Liability)
 - X Count III: Gross Negligence
 - X Count IV: Negligence
 - X Count V: Negligence *per se*
 - X Count VI: Negligent Misrepresentation
 - X Count VII: Negligent Design
 - X Count VIII: Fraudulent Concealment
 - X Count IX: Constructive Fraud
 - X Count X: Fraud
 - X Count XI: Breach of Express Warranties
 - X Count XII: Breach of Implied Warranties
 - X Count XIII: Unjust Enrichment
 - X Count XIV: Violation of State Consumer Protection Laws of the State of Texas.
-
- ☐ Count XV: Loss of Consortium
 - ☐ Count XVI: Wrongful Death
 - ☐ Count XVII: Survival Action

X Count XVIII: Punitive Damages

☐ Furthermore, Plaintiff(s) assert(s) the following additional theories and/or State Causes of Action against Defendant(s) identified in paragraph four (4) above _____. If Plaintiff(s) includes additional theories of recovery, to the extent they require specificity in pleadings, the specific facts and allegations supporting these theories must be pled by Plaintiff(s) in a manner complying with the requirements of the Federal Rules of Civil Procedure.

Plaintiff further states that she originally filed her case as one of the plaintiffs in the Mary Moore, et al. v. Daiichi Sankyo, Inc., et al. action in the Circuit Court of the City of St. Louis, Missouri on June 26, 2015. As such, this action is subject to the 10 day re-filing provision of Judge Kugler's Opinion dated July 27, 2016 found at Document #807, and relates back to original action filed in the City of St. Louis on June 26, 2015.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants of compensatory damages, punitive damages, interest, costs of suit, and such further relief as the Court deems equitable and just, and as set forth in the Master Long Form Complaint and Jury Demand as appropriate.

JURY DEMAND

Plaintiff(s) hereby demand a trial by jury as to all claims in this action.

Dated:08/01/2016

Respectfully Submitted by,

s/Matthew J. Schumacher

Matthew J. Schumacher (MN Bar 244946)

Stephen J. Randall (MN Bar 221910)

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Counsel for Plaintiff(s)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U S Government Plaintiff
2 U S Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|-----|-----|---|-----|-----|
| Citizen of This State | 1 | 1 | Incorporated or Principal Place of Business In This State | 4 | 4 |
| Citizen of Another State | 2 | 2 | Incorporated and Principal Place of Business In Another State | 5 | 5 |
| Citizen or Subject of a Foreign Country | 3 | 3 | Foreign Nation | 6 | 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U S Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer w/Disabilities Employment <input type="checkbox"/> 446 Amer w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION (Enter U S Civil Statute under which you are filing and write a brief statement of cause)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY

(See instructions): related to MDL In Re: Benicar (Olmesartan) Products Liability Litigation
JUDGE _____ DOCKET NUMBER _____

X. This case (check one box)

Is not a refiling of a previously dismissed action is a refiling of case number _____ previously dismissed by Judge _____

DATE

SIGNATURE OF ATTORNEY OF RECORD